No. 3019

United States
Circuit Court of Appeals
For the Ninth Circuit.

NAVY YARD ROUTE, a Corporation,
Plaintiff in Error,
vs.
H. E. DEVLIN,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Answer of Navy Yard Route 8

Assignments of Error 27

Certificate of Clerk U. S. District Court to Transcript of Record, etc..... 37

Citation on Writ of Error..... 39

Complaint 2

Judgment 16

Names and Addresses of Counsel 1

Notice and Waiver 24

Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond 28

Order Extending Time to and Including June 26, 1917, to File Bill of Exceptions, etc..... 19

Order Settling Bill of Exceptions 23

Petition for Writ of Error 25

Reply to Separate Answer of Defendant Navy Yard Route 12

Stipulation Extending Time to and Including June 26, 1917, to Prepare Bill of Exceptions, etc..... 18

Stipulation and Order Extending Time to July 15, 1917, to File Record and Docket Cause. 33

Stipulation as to Contents of Bill of Exceptions. 20

Stipulation as to Contents of Printed Record.. 35

Index. Page

Stipulation Under Rule 23 43
Summons 6
Supersedeas Bond 30
Trial 14
Verdict 15
Writ of Error 40

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Names and Addresses of Counsel.

Messrs. MORRIS & SHIPLEY, Attorneys for Plaintiff in Error,

Room 55 Haller Building, Seattle, Washington.

Messrs. BRONSON, ROBINSON & JONES, Attorneys for Plaintiff in Error,

614 Colman Building, Seattle, Washington.

PAUL S. DUBUAR, Esquire, Attorney for Plaintiff in Error,

55 Haller Building, Seattle, Washington.

FRANK E. GREEN, Esquire, Attorney for Defendant in Error,

228 Burke Building, Seattle, Washington.

[1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Complaint.

Comes now plaintiff and for cause of action against the defendants alleges:

I.

That the defendant Puget Sound Navigation Company is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, with its principal place of business in the City of Seattle, King County, State of Washington, and has been such during all the times referred to herein.

II.

That the defendant Navy Yard Route is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in the City of Seattle, King County, State of Washington, and has been such during all the times referred to herein.

III.

That during all the times referred to herein the

defendants owned and operated that certain steamship "Flyer."

IV.

That during the month of October, 1916, the plaintiff was employed as steward on the steamship "Bremerton," which steamship was then carrying freight and passengers to and from various ports on Puget Sound, one of which ports was the town or City of Charleston, [2] Kitsap County, Washington.

V.

That on or about the 24th day of October, 1916, while the plaintiff was engaged in his duties as steward as aforesaid, and while standing between the stern and amidships on the port side guard of said steamship "Bremerton," which said guard extended out several inches from the hull of said steamship and was situated above and near the water line thereof; and while said steamship "Bremerton" was proceeding on her course from the aforesaid port of Charleston, the defendants operated and managed the said steamship "Flyer" in such a grossly reckless, careless, and negligent manner that said steamship "Flyer" rammed her stern against, upon, and into the part of the said steamship "Bremerton" where plaintiff was then standing, and upon and against plaintiff; from all of which plaintiff's right thigh was cut, torn, and lacerated, and the bone thereof was fractured and splintered and plaintiff's right leg was cut, lacerated, torn, and crushed, and plaintiff's right ankle and foot were sprained, cut, lacerated, and torn,

and plaintiff's nose was broken, lacerated and torn, and plaintiff received a large number, too numerous to mention, of cuts, lacerations, tears and bruises on various parts of his body, and plaintiff suffered other grievous injuries the full extent of which are as yet to plaintiff unknown, and plaintiff suffered intense mental anguish and physical pain, and has so continued to suffer ever since, and still so suffers, and plaintiff alleges the fact to be that his aforesaid injuries are of a permanent nature from which he will never recover.

VI.

That on account of the aforesaid injuries plaintiff was taken to a hospital where he is still confined, and has incurred expenses for said hospital service up to the present time in the sum of Two Hundred Twenty-five Dollars ($225.00), and alleges that he will have to incur further hospital expenses in a sum of not less than One Hundred Fifty Dollars ($150.00). **[3]**

VII.

That on account of the aforesaid injuries the plaintiff was compelled to employ physicians and surgeons and has incurred expenses up to the present time therefor in the sum of Five Hundred Dollars ($500.00), and alleges that he will have to incur further expenses for the same reason in a sum of not less than Two Hundred and Fifty Dollars ($250.00).

VIII.

That at the time of plaintiff's aforesaid injuries he was a strong, healthy, robust man, of the age of

41 years, with a life expectancy of about 28 years, capable of earning and did earn about Seventy Dollars per month; that on account of said injuries he has been unable to earn anything whatsoever from the time of said injuries up to the present time, and alleges that he will not be able to earn anything for a long time to come, and that his earning capacity has been greatly reduced for the remainder of his lifetime.

IX.

That on account of the aforesaid injuries; on account of the mental anguish and physical suffering; on account of the expenditures incurred and to be incurred by plaintiff; on account of lost earnings and permanently reduced earning capacity; and on account of his permanent injuries he has been damaged in a total sum of Twenty Thousand Dollars ($20,000.00), no portion of which has been paid and all of which is now due him.

WHEREFORE plaintiff prays the Court for judgment against the defendants and each of them in the sum of Twenty Thousand Dollars ($20,000.00), and for his costs and disbursements in this action and such other relief as it may please the Court to grant him.

FRANK E. GREEN,
Attorney for Plaintiff. [4]

United States of America,
Western District of Washington,—ss.

H. E. Devlin, first having been duly sworn, on oath deposes and says: That he is the plaintiff in

the above-entitled action; that he has heard the foregoing complaint and knows the contents thereof and believes the same to be true.

H. E. DEVLIN.

Subscribed and sworn to before me this 17th day of February, 1917.

FRANK E. GREEN,

Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Complaint. Filed in the U. S. District Court, Western District of Washington, Northern Division. Feb. 20, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [5]

UNITED STATES OF AMERICA,

In the United States District Court for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Summons.

The President of the United States of America, Greeting: To the Above-named Defendants, Puget Sound Navigation Company, a Corporation, and Navy Yard Route, a Corporation.

You are hereby required to appear in the United

States District Court, in and for the Western District of Washington, Northern Division, within twenty days after the day of service of this summons upon you, exclusive of the day of service, and answer the complaint of the above-named plaintiff, now on file in the office of the clerk of said court, in the City of Seattle, a copy of which complaint is herewith delivered to you; and unless you so appear and answer, the plaintiff will apply to the Court for the relief demanded in said complaint.

WITNESS, the Hon JEREMIAH NETERER, Judge of said Court, this 20th day of February, in the year of our Lord one thousand nine hundred and seventeen, and of our Independence the one hundred and forty-first.

[Seal] FRANK L. CROSBY,
Clerk.
By ——————————,
Deputy Clerk. [6]

MARSHAL'S RETURN.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the within Puget Sound Navigation Company, a corporation, by serving Frank E. Burns, Resident Agent, and on the Navy Yard Route, a corporation, by serving A. J. Webb, Managing Agent, all at Seattle, on the 20th day of February, 1917.

Fees $4.24.

JOHN M. BOYLE,
U. S. Marshal.
By Donald D. Fullen,
Deputy.

[Endorsed]: Summons. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 21, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [7]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Answer of Navy Yard Route.

Comes now defendant Navy Yard Route, and for answer to plaintiff's complaint herein, says and alleges as follows:

I.

Answering Paragraphs I and II, defendant admits the same.

II.

Answering Paragraph III, this defendant admits that it operated the steamship "Flyer," but denies that it owned the same.

III.

Answering Paragraph IV, this defendant admits the same.

IV.

Answering Paragraph V, this defendant admits that plaintiff was injured in a collision between the steamers "Flyer" and "Bremerton" at the time and place therein mentioned; this defendant specifically denies that the defendants or either of them, operated the steamer "Flyer" in a grossly reckless, careless and negligent manner, or in any reckless, careless or negligent manner; with reference to the allegations as to the particulars of plaintiff's injury, contained in said paragraph, this defendant has no knowledge or information sufficient to form a belief as to the truth or falsity thereof, and it therefore denies each and all of said [8] allegations; defendant denies all the other allegations contained in said paragraph.

V.

Answering Paragraph VI, defendant has no knowledge or information sufficient to form a belief as to the truth or falsity thereof, and defendant therefore denies each and every allegation therein contained.

VI.

Answering Paragraph VII, defendant has no knowledge or information sufficient to form a belief as to the allegations therein contained, and it therefore denies each and every allegation therein contained.

VII.

Answering Paragraph VIII, defendant has no knowledge or information sufficient to form a belief as to the truth or falsity thereof, and it therefore

denies each and every allegation therein contained.

VIII.

Answering Paragraph IX, this defendant denies that plaintiff has been damaged in the sum of $20,000, or in any sum; defendant admits that it has not paid plaintiff any portion of the sum claimed by plaintiff; defendant denies that any sum is due plaintiff, and defendant denies all the other allegations contained in said paragraph.

FIRST AFFIRMATIVE DEFENSE.

For a first affirmative defense this defendant alleges:

I.

That the plaintiff's injury was caused wholly and solely by the negligence of the persons operating the steamer "Bremerton," who, in open water and in full daylight, so recklessly and [9] carelessly navigated said steamer "Bremerton" as to bring her into collision with the steamer "Flyer," as the said steamer "Flyer" was in a lawful and careful manner backing away from the dock at Charleston.

SECOND AFFIRMATIVE DEFENSE.

For a second and further affirmative defense this defendant alleges:

I.

That at the time and place in question, plaintiff failed to exercise proper care and caution, and that the negligence of plaintiff was the moving cause of his injury, if any, and that the same contributed thereto, and that said injuries, if any, would not

have resulted except for the fault and negligence of plaintiff.

WHEREFORE, having fully answered, this defendant prays that this action be dismissed, and that it recover its costs herein.

MORRIS & SHIPLEY,
PAUL S. DUBUAR,
Attorneys for Defendant Navy Yard Route.

State of Washington,
County of King,—ss.

H. B. Kennedy, being first duly sworn, on oath says: That he is the President of the Navy Yard Route, and that he makes this verification for and on behalf of said defendant corporation, and that he is authorized so to do; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

H. B. KENNEDY.

Subscribed and sworn to before me this 12th day of April, 1917.

[Notarial Seal] PAUL S. DUBUAR,
Notary Public in and for the State of Washington, Residing at Seattle.

Service of within Answer and receipt of copy admitted this 12th day of April, 1917.

FRANK E. GREEN,
Attorney for Plaintiff.

[Endorsed]: Answer of Navy Yard Route. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 12, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. **[10]**

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Reply to Separate Answer of Defendant Navy Yard Route.

Comes now plaintiff and replying to the affirmative defenses set up in the separate answer of the defendant Navy Yard Route says:

I.

Referring to the first affirmative defense thereof, he denies each and every allegation therein contained.

II.

Referring to the second affirmative defense thereof, he denies each and every allegation therein contained.

WHEREFORE plaintiff prays the Court for judgment according to his complaint.

FRANK E. GREEN,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

H. E. Devlin, first having been duly sworn, on oath deposes and says: That he is the plaintiff in the above-entitled cause; that he has read the foregoing reply, knows the contents thereof, and believes the same to be true.

H. E. DEVLIN,

Subscribed and sworn to before me this 12th day of April, 1917.

[Seal] FRANK E. GREEN,
Notary Public in and for the State of Washington, Residing at Seattle.

Service of within Reply and receipt of copy admitted this 13th day of April, 1917.

MORRIS & SHIPLEY,
Attorneys for Dft. Navy Yard Route. [11]

[Endorsed]: Reply to Separate Answer of Defendant Navy Yard Route. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 13, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [12]

No. 3560.

H. E. DEVLIN,
Plaintiff,

vs.

PUGET SOUND NAVIGATION CO., et al.,
Defendants.

Trial.

Now on this day this cause comes on for trial in open court, the plaintiff being represented by Frank E. Green and the defendants represented by Bronson, Robinson and Jones and Morris & Shipley. Whereupon a jury is called and come and answer to their names as follows: Andrew Naslund, John Leyden, A. J. Goddard, B. Roy Anderson, L. P. Baumann, W. W. Judd, E. Josephine Cook, Rudolph Nordhoff, K. C. Kerr, T. E. Headlee, W. F. Leavell, F. J. Herberger, twelve good and lawful persons duly empaneled and sworn, whereupon opening statement is made by counsel for plaintiff and the following witnesses examined: H. E. Devlin, Roscoe Hogue, Frank N. Kannapell, Claude Perkins, Dr. Wm. Teepell, Dr. Everett O. Jones, and introduction of Exhibits, "A," "B," "C," "D," "E," "F," "G" and "H." The hour of adjournment having arrived, by consent of counsel the trial is continued until May 29, 1917, at 10:00, and the jury being cautioned by the Court they are allowed to separate until that hour.

Dated May 25, 1917.

Journal 6, page, 171. [13]

In the District Court of the United States for the Western District of Washington.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Verdict.

We, the jury in the above-entitled cause, find for the plaintiff and against the Navy Yard Route, a corporation, and assess his damages at the sum of $4,750, and find in favor of the defendant Puget Sound Navigation Company.

E. JOSEPHINE COOK,
Foreman.

[Endorsed]: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 1, 1917. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [34]

In the United States District Court for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Judgment.

The above-entitled cause having come on for trial on the 25th, 28th, and 31st, days of May, 1917, and the plaintiff being represented by Frank E. Green, his attorney, and the defendant Navy Yard Route, a corporation, by its attorneys Morris & Shipley, and Paul S. Dubuar, and the defendant Puget Sound Navigation Company, a corporation, by Bronson, Robinson & Jones, its attorneys, and a jury having been duly impaneled and sworn to try said cause, and said cause having been tried by said jury and all the evidence on behalf of both parties having been submitted, and the Court having instructed the jury and after argument by respective counsel said cause was submitted to the jury and the jury thereupon retired, and after due consideration of said cause, brought in a verdict on the first day of June, 1917, for the plaintiff in the sum of Four Thousand Seven Hundred Fifty Dollars ($4,750) against the defendant Navy Yard Route, a corporation, and

upon instructions of the Court a verdict in favor of the defendant Puget Sound Navigation Company, a corporation.

NOW, THEREFORE, on motion of Frank E. Green, attorney for plaintiff, in said cause, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that by reason of the law, and the aforesaid verdict, the plaintiff H. E. Devlin do have and recover of and from the defendant Navy Yard Route, a corporation, the sum of Four Thousand [35] Seven Hundred Fifty Dollars ($4,750), with interest thereon at the rate of six per cent per annum until paid from June 1, 1917, together with plaintiff's costs and disbursements incurred in this action to be taxed, and that plaintiff take nothing against the defendant Puget Sound Navigation Company, a corporation; and that said Puget Sound Navigation Company, a corporation, have judgment against the plaintiff for its costs to be taxed.

Done in open court at Seattle, Washington, this 6th day of June, 1917.

JEREMIAH NETERER,
Judge.

[Endorsed]: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 6, 1917, Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [36]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Stipulation Extending Time to and Including June 26, 1917, to Prepare Bill of Exceptions, etc.

It is hereby stipulated between attorneys for plaintiff and for defendants that the defendant Navy Yard Route shall have to and including the 26th day of June, 1917, in which to prepare and serve upon plaintiff the draft of its proposed bill of exceptions in said cause, and that plaintiff shall have ten days thereafter in which to prepare and serve its proposed amendments, if any, to said proposed bill of exceptions.

Dated at Seattle, Washington, this 6th day of June, 1917.

FRANK E. GREEN,
Attorney for Plaintiff.

MORRIS & SHIPLEY,
BRONSON, ROBINSON & JONES,
PAUL S. DUBUAR,
Attorneys for Defendant Navy Yard Route.

[Endorsed]: Stipulation Fixing Time to Prepare Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [37]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Order Extending Time to and Including June 26, 1917, to File Bill of Exceptions, etc.

Upon stipulation of the parties plaintiff and defendants filed herein, it is hereby ordered and adjudged that defendant Navy Yard Route do have to and including Tuesday the 26th day of June, 1917, in which to prepare and serve upon defendant and file its proposed bill of exceptions in this cause, and that plaintiff have ten days thereafter in which to prepare, serve and file his proposed amendments thereto.

Dated at Seattle, Washington, this 6th day of June, 1917.

JEREMIAH NETERER,
Judge.

O. K.—FRANK E. GREEN,
Atty. for Plaintiff.

[Endorsed]: Order Fixing Time to File Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [38]

In the United States District Court for the Western District of Washington, Northern Division.

No 3560.

H. E. DEVLIN,
Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,
Defendants.

Stipulation as to Contents of Bill of Exceptions.

It is stipulated and agreed between the said plaintiff H. E. Devlin, by Frank E. Green, his attorney, and the defendant Navy Yard Route, by Morris & Shipley, its attorneys:

1. That defendant Navy Yard Route has waived and hereby waives certain assignments of error, to wit: Assignments Nos. 2, 3, 5, 7, 9 and 10 embraced in the assignments of error filed herein;

2. That in the event of the writ of error issued in this cause being perfected, and the cause being heard in the Circuit Court of Appeals thereon, that no question will be raised as to the sufficiency of the evidence concerning the facts involved so far as the movements and operation of the steamboats "Flyer" and "Bremerton," or of the collision between the same, or the extent or character of plaintiff's injury, or as to which of said two boats was responsible for the collision, and that for the purpose of reducing the printed record, all testimony offered on the trial relating to said subjects, not copied in the bill of exceptions, be, and the same is omitted as irrelevant, and the proposed bill of exceptions heretofore served shall be settled, signed and certified as containing all the evidence and testimony offered and [39] received upon the trial, and that the Court's instructions to the jury be omitted from the bill of exceptions, no exceptions being taken thereto;

3. That all maps, photographs and exhibits introduced in evidence during the trial and marked plaintiff's and defendants' exhibits respectively, and forming a part of the evidence on the trial in the above-entitled cause, be omitted from the bill of exceptions, and not copied into the bill of exceptions, but that said bill of exceptions for all purposes be considered to have sufficiently incorporated the same therein by appropriate reference thereto as shown in said proposed bill of exceptions, and that the original exhibits be retained in the custody of the Clerk of said Court, and be not forwarded to

the Circuit Court of Appeals in connection with the record herein, and that the record be treated as complete without the production thereof;

4. That the proposed bill of exceptions, omitting the Court's instructions therefrom, heretofore served upon plaintiff Devlin, by defendant Navy Yard Route, be signed, settled and certified by the Court, as a true, correct and complete bill of exceptions herein, and that the certificate attached thereto, be signed upon presentation to the Court following the signing of the stipulation.

Dated at Seattle, Washington, this 29th day of June, 1917.

FRANK GREEN,
Attorney for Plaintiff.
MORRIS & SHIPLEY,
Attorneys for Defendant Navy Yard Route.

[Endorsed]: Stipulation as to Contents of Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 2, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [40]

In the United States District Court for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,
Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,
Defendants.

Order Settling Bill of Exceptions.

The application of defendant Navy Yard Route to have its proposed bill of exceptions heretofore served, settled, allowed and certified by the Court, came on duly to be heard this day, and it appearing to the Court that a stipulation has been duly entered into by the respective parties, and filed herein, stipulating that defendant Navy Yard Route, proposed bill of exceptions so submitted to the Court, be settled, signed and certified, and the Court being fully advised in the premises, and in accordance with the stipulation of the parties so entered into, it is hereby ordered that the bill of exceptions so presented by defendant Navy Yard Route, be, and the same is hereby allowed, settled and certified as the bill of exceptions in this cause.

Done in open Court this 2d day of July, 1917.

JEREMIAH NETERER,
Judge.

Receipt of copy of foregoing order, and consent to the signing of the same is hereby acknowledged.

FRANK E. GREEN,
Attorney for Plaintiff H. E. Devlin.

[Endorsed]: Order Settling Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 2, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

[41]

In the United States District Court for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Notice and Waiver.

To the Puget Sound Navigation Company, a Corporation, Defendant:

You are hereby notified that the Navy Yard Route, a corporation, one of the defendants in the above numbered and entitled cause, will, upon the 6th day of June, 1917, present and file herein its petition for a writ of error in the above-entitled cause, returnable to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above numbered and entitled cause, rendered in favor of said plaintiff and against this defendant Navy Yard Route, and you are hereby invited to join this defendant in suing out and prosecuting a writ of error herein, or you will be deemed to have acquiesced in said judgment as entered, and the Navy Yard Route will prosecute said writ of error without joining you as a party.

MORRIS & SHIPLEY and
PAUL S. DUBUAR,
Attorneys for Defendant Navy Yard Route.

Service of the foregoing notice is accepted by defendant Puget Sound Navigation Company, this 6th day of June, 1917, and [42] all right to sue out a writ of error or of joining therein or being a party thereto is hereby expressly waived, and consent is hereby entered to the issuance and prosecution of a writ of error herein by defendant Navy Yard Route without this defendant being made a party thereto.

BRONSEN, ROBINSON & JONES,
Attorneys for Defendant Puget Sound Navigation Company.

[Endorsed]: Notice and Waiver. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 27, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [43]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Petition for Writ of Error.

Comes now the Navy Yard Route, a corporation, one of the defendants in the above numbered and entitled cause, and says:

That on or about the 6th day of June, 1917, this Court entered a judgment herein in favor of the plaintiff, H. E. Devlin, against this defendant Navy Yard Route, a corporation, and in favor of the defendant Puget Sound Navigation Company, a corporation, dismissing said action as against it and for costs against plaintiff, in which judgment against this defendant, and the proceedings prior thereto in this cause, certain errors were committed to the prejudice of this defendant Navy Yard Route, and of which more in detail appears from the assignments of errors filed with this petition.

WHEREFORE, this defendant Navy Yard Route prays that a writ of error issue in this behalf out of the United States Circuit Court of Appeals, Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals.

IRA BRONSON,
J. S. ROBINSON,
H. B. JONES,
WILL H. MORRIS,
S. M. SHIPLEY,
PAUL S. DUBUAŔ,
Attorneys for Defendant Navy Yard Route.

[Endorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist., of Washington, Northern Division. June 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Assignments of Error.

Now comes the defendant Navy Yard Route, a corporation, one of the defendants in this action, in connection with its petition for a writ of error in the above-entitled cause, and makes the following assignments of error, which it avers occurred upon the trial of said cause, and proceedings therein, as follows:

11. Error in entering judgment upon the verdict herein in favor of plaintiff against defendant Navy Yard Route. [47]

12. That the averments contained in the pleadings and the evidence submitted at the trial as shown by the record are insufficient to sustain or support the verdict against this defendant, and that under the law applicable thereto judgment was erroneously entered.

13. That the judgment entered herein in favor of plaintiff against defendant Navy Yard Route is con-

trary to the law and the evidence.

14. In permitting this cause to be submitted to the jury, in receiving and filing the verdict of the jury, and in entering judgment thereon, as contrary to law, under the averments and proof as shown by the record.

WHEREFORE, defendant Navy Yard Route, prays that said judgment be reversed.

MORRIS & SHIPLEY,
BRONSON, ROBINSON & JONES and
PAUL S. DUBUAR,
Attorneys for Defendant Navy Yard Route.

[Endorsed]: Assignment of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [48]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond.

On this 6th day of June, 1917, came the defend-

ant Navy Yard Route, a corporation, by its attorneys, and filed herein and presented to the Court its petition, praying for the allowance for a writ of error, an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the said defendant Navy Yard Route giving bond according to law, in the sum of Ten Thousand Dollars, which shall operate as a supersedeas bond, and a bond for costs.

JEREMIAH NETERER,
Judge.

[Endorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. June 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

[49]

In the District Court of the United States for the Western District of Washington, Northern Division,

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS, That we, Navy Yard Route, a corporation, as principal, and H. B. Kennedy and Joshua Green, as sureties, are held and firmly bound unto the above-named plaintiff H. E. Devlin, defendant in error, in the full and just sum of Ten Thousand Dollars ($10,000.00), lawful money of the United States, to be paid to the said H. E. Devlin, his executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of June, 1917.

The condition of this obligation is such that:

WHEREAS, lately at a term of the District Court of the United States, for the Western District of Washington, Northern Division, in a suit pending

therein between the above parties, plaintiff and defendants, a judgment was rendered in favor of said plaintiff Devlin, against the defendant Navy Yard Route, dated June 6, 1917, for the sum of Four Thousand Seven Hundred Fifty Dollars ($4,750) together with costs taxed therein, and interest from June 1, 1917, at 6% per annum, and the said defendant Navy Yard Route, having [50] obtained a writ of error and filed a copy thereof in the office of the Clerk of said Court, to reverse said judgment and a citation in due form directed to said H. E. Devlin, citing him to be and appear in the Circuit Court of Appeals for the Ninth Circuit, within thirty days from the date thereof, and the Court having fixed the amount of the bond to be given by said Navy Yard Route, plaintiff in error to operate as a supersedeas bond, and to supersede said judgment, at the sum of Ten Thousand Dollars ($10,000) upon agreement of counsel of said parties as to the amount thereof, made in open Court;

NOW, THEREFORE, this obligation is further conditioned that if said bounden principal Navy Yard Route, plaintiff in error, shall prosecute its said writ of error to effect, and answer all damages, costs and accrued costs, and pay said judgment and costs, if it fails to make its plea and writ of error good, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed the date above written.

NAVY YARD ROUTE, (Seal)
Principal.
By H. B. KENNEDY,
President.

[Seal] Attest: JOSHUA GREENE,
Secretary.

H. B. KENNEDY, (Seal)
JOSHUA GREENE, (Seal)
Sureties.

United States of America,
Western District of Washington,—ss.

H. B. Kennedy and Joshua Green, each being first duly sworn, of oath says: That he is one of the sureties above named; that he is a resident and freeholder of and in the Northern Division [51] of the Western District of Washington, and is personally worth in separate property, situated therein, a sum in excess of Twenty Thousand Dollars ($20,000) over and above all his just debts and liabilities, exclusive of property exempt from execution.

[Seal]

H. B. KENNEDY.
JOSHUA A. GREENE,

Subscribed and sworn to before me this 6th day of June, 1917.

PAUL S. DUBUAR,
Notary Public in and for the State of Washington,
Residing at Seattle.

Sufficiency of sureties approved.

FRANK E. GREEN,
Attorney for Plaintiff.

Within bond accepted and approved this 6th day of June, 1917.

JEREMIAH NETERER,
District Judge.

[Endorsed]: Supersedeas Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [52]

The United States Circuit Court of Appeals for the Ninth Circuit.

No. 3560.

NAVY YARD ROUTE, a Corporation,
Plaintiff in Error,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation,
Defendant.

H. E. DEVLIN,
Defendant in Error.

Stipulation and Order Extending Time to July 15, 1917, to File Record and Docket Cause.

It is hereby stipulated and agreed between the plaintiff in error, by its counsel, and defendant in error, by his counsel, that the time within which the clerk of the District Court is required to prepare and file the record in this cause in the Circuit Court of Appeals, shall be extended to and including the

15th day of July, 1917, and that an order be entered accordingly.

MORRIS & SHIPLEY,
Attorneys for Plaintiff in Error.
FRANK GREEN,
Attorney for Defendant in Error.

The foregoing stipulation being presented to the undersigned, the Judge who signed and granted the writ of error and citation in this cause, and it appearing that sufficient cause exists to justify the extension of time within which the clerk of the District Court be required to prepare and certify, and the plaintiff in error to file in the Circuit Court of Appeals, the record in this cause as stipulated, therefore, it is by the Court ordered that said period of time be, and the same is hereby extended until July 15th, 1917.

Dated this 2d day of July, 1917.

JEREMIAH NETERER,
Judge.

[Endorsed]: Stipulation Extending Time for Filing Record in Circuit Court of Appeals, and Order. Filed in the U. S. District Court, Western [56] Dist. of Washington, Northern Division. July 2, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [57]

In the United States District Court for the Western District of Washington, Northern Division.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Stipulation as to Contents of Printed Record.

It is hereby stipulated by and between plaintiff H. E. Devlin, defendant in error, and defendant Navy Yard Route, plaintiff in error, by their respective counsel, that there shall be embraced in the record made and returned by the clerk of said Court to the Circuit Court of Appeals and printed as the printed record upon which this cause shall be heard on writ of error in the Circuit Court of Appeals, the following only:

Complaint and summons;
Separate answer of Navy Yard Route;
Reply of plaintiff thereto;
Journal record of trial and empaneling of jury;
Bill of exceptions;
Verdict;
Judgment of the Court;
Stipulation fixing time for filing proposed bill of exceptions;
Order thereon;

Stipulation as to contents of bill of exceptions;
Order settling bill of exceptions;
Notice to and waiver by defendant Puget Sound Navigation Co.;
Petition for writ of error;
Assignments of error;
Order allowing writ of error and fixing supersedeas bond;
Writ of error;
Citation in error;
Supersedeas bond and approval;
This stipulation as to contents of printed record;
Certificate of clerk to transcript of record;
"Original" Writ of error;
"Original" Citation.
Stipulation and Order extending time filing record.

Dated at Seattle, Washington, this 2d day of July, 1917.

MORRIS & SHIPLEY,
Attorneys for Defendant Navy Yard Route, Plaintiff in Error.

FRANK GREEN,
Attorney for Plaintiff H. E. Devlin, Defendant in Error. [58]

[Endorsed]: Stipulation as to Contents of Printed Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 2, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [59]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3560.

NAVY YARD ROUTE, a Corporation,
Plaintiff in Error,

vs.

H. E. DEVLIN,
Defendant in Error.

Certificate of Clerk U. S. District Court to Transcript of Record, etc.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing pages, numbered from 1 to 59, inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause as the same remain of record and on file in the office of the clerk of said Court, and as are necessary to the hearing of said cause on writ of error therein in the United States Circuit Court of Appeals for the Ninth Circuit, as stipulated for by counsel of record herein, and that the same constitute the record on return to said writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [60]

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return, 140 folios at 15¢	$21.00
Certificate of Clerk to transcript of record, 4 folios at 15¢	.60
Seal to said Certificate	.20
	$21.80

I hereby certify that the above cost for preparing and certifying record, amounting to $21.80, has been paid to me by the attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 10th day of July, 1917.

[Seal] FRANK L. CROSBY,
Clerk U. S. District Court. [61]

The United States Circuit Court of Appeals for the Ninth Circuit.

No. 3560.

Citation on Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.
The President of the United States to H. E. Devlin, Defendant in Error, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein Navy Yard Route, a corporation is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable E. D. WHITE, Chief Justice of the United States, this 6th day of June, A. D. 1917.

[Seal] JEREMIAH NETERER,
United States District Judge.

Received copy of the above citation this 6th day of June, 1917.

FRANK E. GREEN,
Attorney for Plaintiff.

Received copy of the above citation this 6th day of June, 1917.

BRONSON,
ROBINSON,
JONES. [62]

[Endorsed]: 3560. Original. United States Circuit Court of Appeals for the Ninth Circuit. H. E. Devlin, Plaintiff, vs. Puget Sound Navigation Co., et al., Defendants. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jun. 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [63]

The United States Circuit Court of Appeals for the Ninth Circuit.

No. 3560.

H. E. DEVLIN,

Plaintiff,

vs.

PUGET SOUND NAVIGATION COMPANY, a Corporation, and NAVY YARD ROUTE, a Corporation,

Defendants.

Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in

the rendition of the judgment, of a plea which is in said Circuit Court before you, or some of you, between H. E. Devlin, plaintiff, and Navy Yard Route, a corporation, defendant, a manifest error it is claimed hath happened to the great damage of the said Navy Yard Route, a corporation, defendant, as by its complaint appears, we being willing that error, if any hath been done, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, State of California, in said circuit within thirty [64] days from the date hereof, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable E. D. WHITE, Chief Justice of the United States, this 6th day of June, A. D. 1917.

[Seal] FRANK L. CROSBY,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division.

_____,

Deputy.

Allowed by

JEREMIAH NETERER,
Judge. [65]

[Endorsed]: 3560. Original. United States Circuit Court of Appeals for the Ninth Circuit. H. E. Devlin, Plaintiff, vs. Puget Sound Navigation Co., et al., Defendants. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jun. 6, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [66]

[Endorsed]: No. 3019. United States Circuit Court of Appeals for the Ninth Circuit. Navy Yard Route, a Corporation, Plaintiff in Error, vs. H. E. Devlin, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed July 13, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

The United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

NAVY YARD ROUTE, a Corporation,
Plaintiff in Error.

PUGET SOUND NAVIGATION COMPANY, a Corporation,
Defendant,

vs.

H. E. DEVLIN,
Defendant in Error.

Stipulation Under Rule 23.

It is hereby stipulated and agreed by and between plaintiff in error, and defendant in error, by their respective counsel, as follows:

Plaintiff in error having notified defendant in error of its intention to raise and present in the Circuit Court of Appeals, a question of jurisdiction in the District Court of this cause, because of the absence of any allegation or showing in the pleadings or record as to the domicile, residence or citizenship of defendant in error, plaintiff below, whatsoever, as shown by the record and transcript herein filed in the Circuit Court of Appeals by plaintiff in error; and counsel for the respective parties hereby stipulate that the pleadings and entire record of this cause in the Court below and the record in the Circuit Court of Appeals are silent and contain no showing concerning the domicile, residence or citi-

zenship of the plaintiff below, defendant in error herein, by reason of which facts counsel for the respective parties considering the printing in the record of those portions of the assignments of error, bill of exceptions and evidence, presenting questions as to the admissibility of evidence offered and rejected, not to be essential for the hearing of this cause in the Circuit Court of Appeals, and in order to save costs of printing, it is therefore stipulated:

That the question of jurisdiction so raised by plaintiff in error is the question on which it intends to rely, and that all assignments of error relating to the introduction or rejection of evidence or to the weight or sufficiency of evidence, on all questions other than relating to the jurisdiction of the District Court, be, and are waived; and that the Clerk of the Circuit Court of Appeals shall omit from the printed record the bill of exceptions, containing the evidence, and those portions of the assignments of error based upon introduction and rejection of evidence, and shall print only the last four assignments of error in the printed record, and that the stipulation heretofore entered into specifying the portions of the transcript of record to be printed, be, and the same is modified as above stipulated;

It is further stipulated that no advantage shall be taken or objection interposed in the Circuit Court of Appeals to the failure to print the entire record contained in the transcript filed in the Circuit Court of Appeals by plaintiff in error.

Dated at Seattle, Washington, this 13th day of July, 1917.

WILL H. MORRIS,
SILAS M. SHIPLEY,
PAUL S. DUBUAR,
Attorneys for Plaintiff in Error.
FRANK E. GREEN,
Attorney for Defendant in Error.

[Endorsed]: No. 3019. Original. In the United States Circuit Court of Appeals, Ninth Circuit. Navy Yard Route, a Corporation, Plaintiff in Error; Puget Sound Navigation Company, a Corporation, Defendant, vs. H. E. Devlin, Defendant in Error. Stipulation as to Printing Record. Filed Jul. 16, 1917. F. D. Monckton, Clerk.